

RESOLUTION NO. 98-177

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING
AMENDMENT TO THE CITY OF LODI'S DEFERRED
COMPENSATION PLAN DOCUMENT

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WHEREAS, the Federal Tax Code has been amended to require segregated trust funds; and

WHEREAS, the Federal Tax Code made other technical modifications to deferred compensation guidelines.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Lodi has reviewed and hereby approves the City of Lodi Deferred Compensation Plan Document, attached and marked Exhibit A; and

BE IT FURTHER RESOLVED, the effective date of this Deferred Compensation Plan Document shall be December 1, 1998.

Dated: December 1, 1998

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I hereby certify that Resolution No. 98-177 was passed and adopted by the City Council of the City of Lodi in a special meeting held December 1, 1998, by the following vote:

AYES: COUNCIL MEMBERS – Johnson, Land, Mann, Pennino and
Sieglock (Mayor)

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None

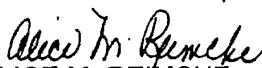

ALICE M. REIMCHE
City Clerk

EXHIBIT A

DEFERRED COMPENSATION PLAN AMENDED AND RESTATED PLAN AND TRUST/CUSTODIAL DOCUMENT

Section 1. Name: The name of this Plan and Trust/Custodial document is the City of Lodi, State of California, Deferred Compensation Plan, hereinafter referred to as the "Plan." This Plan is the continuation in restated form of the City of Lodi Deferred Compensation Plan previously established by the City of Lodi.

Section 2. Purpose: The primary purpose of the Plan is to attract and retain personnel by permitting them to enter into agreements with the Employer that will provide for deferral of payment of a portion of their current Compensation until death, disability, retirement, termination of employment, or other events as provided herein, in accordance with applicable provisions of State law, and Section 457 and other applicable Sections of the Internal Revenue Code. Except as otherwise stated herein, this amended and restated Plan shall become effective December 2, 1998.

Section 3. Definitions: For the purposes of this Plan when used and capitalized herein the following words and phrases shall have the meanings set forth below.

3.1 "Account" means the book account maintained in accordance with Subsection 6.4 for the purpose of recording Deferred Compensation and investment gains or losses allocated thereto.

3.2 "Administration" means the service provider or providers with whom the Employer contracts either investment, record-keeping or other management services for the Plan.

3.3 "Beneficiary" means the person or persons a Participant designates to receive his interest under the Plan after the Participant's death, (provided that a married Participant may designate someone other than his spouse as his Beneficiary only with his spouse's consent.) The designation may be made, and may be revoked and changed, only by a written instrument (in form acceptable to the Employer) signed by the Participant, consented to by the Participant's spouse, if necessary, and filed with the Employer prior to the Participant's death, or if no designated Beneficiary survives the Participant, his Beneficiary shall be his spouse if he is married, or if not, his estate.

3.4 "Code" means the Internal Revenue Code of 1986, as amended.

3.5 "Compensation" means the total of all amounts of salary or wages which would be paid by the employer to or for the benefit of an Employee (if he were not a Participant in the Plan) for services performed during the period that the Employee is a Participant, including any amounts of Deferred Compensation that may be credited to the Participant's Account. Compensation shall be taken into account at its present value and its amount shall be determined without regard to any community property laws.

3.6 "Trustee/Custodian" means a bank, trust company, financial institution, or other legally authorized entity appointed by the Employer to have custody of assets in the Investment and Trust/custodial Fund.

3.7 "Deferred Compensation" means the amount of Compensation which the Participant defers pursuant to his Participation Agreement in accordance with the provisions of this Plan.

3.8 "Disability" means the inability of a Participant to engage in his usual occupation by reason of a medically determinable physical or mental impairment as determined by the Employer on the basis of advice from a physician or physicians.

3.9 "Election Period" means the 59-day period after separation from service with the Employer during which a Participant may elect to defer commencement of benefit payments under the Plan.

3.10 "Employee" means any officer, employee or elected official of the Employer, including all extra-help or temporary employees and/or any independent contractor employee who has been designated by the Employer for participation in the Plan.

3.11 "Employer" means the City of Lodi.

3.12 "Employer Contribution" means the contribution made by the Employer pursuant to Subsection 5.2 of the Plan.

3.13 "Employment Period" means a period from January 1 through December 31 of the same year, except that the first Employment Period of an Employee hired on any date other than January 1 shall be the period beginning with the date of employment and ending on December 31 of the same year.

3.14 "Includible Compensation" means Compensation which (taking into account the provisions of the Code, including Section 403(b) and Section

457) is currently includible in gross income for federal income tax purposes.

3.15 "Investment and Trust/Custodial Fund" means a fund established by the Employer as a convenient method of setting aside a portion of its assets to meet its obligations under the Plan, as provided in Subsection 6.1.

3.16 "Normal Retirement Age" means the date a Participant attains age 70 ½ or, at the election of the Participant, any earlier date that is no earlier than the earliest age at which the Participant has the right to retire under the Public Employees' Retirement System (PERS) Retirement Plan and to receive immediate retirement benefits calculated without actuarial reduction, but in any event not later than the date or age at which the Participant separates from service with the Employer. If a Participant is employed by the Employer beyond age 70 ½, his Normal Retirement Age may be the age at which he separates from service with the Employer; provided that the distribution requirements of Subsection 7.5 are still satisfied with respect to the Participant, and provided further that a Participant who has utilized the catch-up deferral provisions of Subsection 5.3(b) may not thereafter change his Normal Retirement Age.

3.17 "Participant" means any Employee who fulfills the participation requirements under Section 4.

3.18 "Participation Agreement" means the agreement executed and filed by an Employee with the Employer pursuant to Section 4, under which the Employee elects to become a Participant in the Plan and to defer Compensation thereunder.

Section 4. Participation in the Plan:

4.1 Participation. Each Employee may elect to become a Participant in the Plan and defer payment of compensation not yet earned by executing a written Participation Agreement and filing it with the Employer at any time during active employment with the Employer. compensation shall be deferred for any calendar month only if a Participation Agreement providing for such deferral has been entered into and is effective before the beginning of such month.

4.2 Modification of Deferral. A Participation Agreement shall remain in effect until it is terminated or modified. A Participant may modify an existing Participation Agreement to effect subsequent deferrals in accordance with rules established by the Employer. Such modification

must be filed by the Participant with the Employer prior to the beginning of the month for which the modification is to be effective.

4.3 Termination of Deferral. A Participant may terminate further deferral of Compensation under the Plan effective at the beginning of any month by filing with the Employer an executed notice of termination of his Participation Agreement prior to the effective date of termination. Once further deferral of Compensation is terminated, a Participant may rejoin the Plan in accordance with rules established by the Employer. No previously deferred amounts shall be payable to an Employee upon terminating further deferral of Compensation under the Plan unless otherwise due pursuant to Section 7 hereof.

4.4 Selection of Investment Options. The Participation Agreement shall also provide for the selection, pursuant to Subsection 6.3, of one or more investment options in the Investment and Trust/Custodial fund to which the Participant's Deferred compensation shall be allocated; provided that any amounts so allocated equal or exceed a minimum of \$10.00 per pay period. The employer shall invest the Participant's deferrals in accordance with such selection.

Section 5. Amount of Deferrals: Deferral of Compensation:

5.1 Deferral of Compensation. During each employment Period in which an Employee is a Participant in the Plan, the employer shall defer payment of such part of the Participant's compensation as is specified by the Participant in the Participation Agreement which the Participant has executed and filed with the Employer.

5.2 Employer Contributions. During each Employment Period in which an Employee is a Participant in the Plan, the Employer may make an Employer Contribution to the Participant's Account equal to the percentage of the Participant's compensation specified by resolution or labor contract approved by the Employer.

5.3 Limitation. The amount of Compensation which may be deferred by a Participant and the amount of employer Contributions, if any, made to a Participant's Account are subject to the following limitations:

- (a) Annual Limitation. Except as provided in Paragraph (b) below, the maximum amount that a Participant may defer during an Employment Period, when added to the amount of any Employer Contribution for such participant during the Employment Period, shall not exceed the lesser of \$8,000 (or as may be adjusted for cost-of-living by the Secretary of the Treasury) or 33 1/3 % of the

Participant's Includible Compensation. The minimum amount that a Participant may defer is \$10.00 per pay period.

- (b) Catch-Up Deferrals. for one or more of a Participant's last three Employment Periods ending before the participant attains Normal Retirement Age, the maximum amount a Participant may defer during the Employment Period, when added to the amount of any Employer Contribution for such Participant during the Employment Period established in paragraph (a) above, plus so much of such maximum amounts determined under such Paragraph (a) for Employment Periods beginning after December 31, 1978 but before the current Employment Period in which the Participant was eligible to participate in the Plan (or in another eligible deferred compensation plan under Section 457(b) of the Code) less the amount of compensation actually deferred under such Paragraph (a) for such prior Employment Periods shall not exceed \$15,000 per each of such three Employment Periods. The provisions of this Paragraph (b) shall not apply more than once to each Participant.
- (c) Aggregation of Plans. In applying (a) and (b) above, the amount that may be deferred by a Participant under the Plan for any Employment Period shall be reduced by (i) the amount deferred by the Participant for such Employment Period under any other eligible deferred compensation plan under Section 457(b) of the Code, (ii) any Employment Period under Section 403(b) of the Code, (iii) any amount excluded from the Participant's gross income for such Employment Period under Section 402(a)(8) or Section 402(h)(B) of the Code, and (iv) any amount with respect to which a deduction is allowable for such Employment Period by reason of a contribution on behalf of the Participant to an organization described in Section 501(C)(18) of the Code. The Participant shall inform the Employer of his participation in any of the above-listed plans and is solely responsible for any violation of this Paragraph (c).

Section 6. Investment and Trust/Custodial fund Provisions:

6.1 Investment and Trust/Custodial Fund. The Employer shall establish an Investment and Trust/Custodial fund for the purpose of investing amounts of Deferred Compensation and Employer Contributions, if any, credited to Participant Accounts. Such Participants Accounts shall at all times be held by the Trustee/Custodian for the exclusive benefit of the Participant or Beneficiary.

6.2 Trust/Custodial Provisions:

- (a) Trustees/Custodian. The Trustees/Custodian shall be, the duly appointed and authorized City Manager and Finance Director of the City of Lodi. Resignation, removal and appointment of such Trustees/custodian, as well as compensation and expense reimbursement of the Trustees/Custodian shall also be in accordance with appropriate legal guidelines for resignation, removal, appointment, compensation and expenses of City of Lodi.
- (b) The Trustees/Custodian or the Employer shall adopt various investment options for the investment of deferred amounts by Participants or their Beneficiaries, and shall monitor and evaluate the appropriateness of continued offering by the Plan. The Trustees/Custodian or the Employer may de-select options that are determined to be no longer appropriate for offering. In adopting or de-selecting such options, the Trustees/Custodian or Employer, the Participants or their Beneficiaries shall be entitled to select from among the available options for investment of their deferred amounts. In the event options are de-selected, the Trustees/Custodian or Employer may require Participants to move balances to an alternative option offered by the Plan. If any Participants fail to act in response to the written notice, the Trustees/Custodian or employer shall transfer monies out of the de-selected option to an alternative option chosen by the Trustees/Custodian or Employer. By exercising such right to select investment options or by failing to respond to notice to transfer from the de-selected option where the Trustees/Custodian or employer move the monies on behalf of such Participants, the Participants, and their Beneficiaries agree that none of the Plan fiduciaries will be liable for any investment losses, or lost investment opportunity in situations where monies are moved by Trustees/Custodian or Employer, that are experienced by a Participant or Beneficiary in the investment option(s) they select or are selected for them if they fail to take appropriate action in regard to de-selected fund.
- (c) Designation of Fiduciaries. The Employer, Administrator and Trustees/Custodian and the persons they designate to carry out or help carry out their duties or responsibilities are fiduciaries under the Plan. Each fiduciary has only those duties or responsibilities specifically assigned to him under the Plan or delegated to him by another fiduciary. Each fiduciary may assume that any direction, information or action of another fiduciary is proper and need not inquire into the propriety of any such action, direction or information. Except as provided by law, no fiduciary will be

responsible for the malfeasance, misfeasance or nonfeasance of any other fiduciary.

(d) Fiduciary Standards.

(i) The Trustees/Custodian and all other fiduciaries shall discharge their duties with respect to this Plan solely in the interest of the Participants and Beneficiaries of the Plan. Such duties shall be discharged for the exclusive purpose of providing benefits to the Participants and Beneficiaries and defraying expenses of the Plan.

(ii) All fiduciaries shall discharge their duties with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, and as defined by applicable State law.

(e) Trustees/Custodian's Powers and Duties. The Trustees/Custodian's powers and duties shall be those defined under applicable State law.

(f) This Plan and Investment and Trust/Custodial Fund is intended to be exempt from taxation under Section 501(a) of the Internal Revenue Code ("Code") and intended to comply with Section 457(g) of such code. The Trustees/Custodian shall be empowered to submit or designate appropriate agents to submit this Plan and Investment and Trust/Custodial Fund to the Internal Revenue Service for a determination of the eligibility of the Plan under Section 457, and the exempt status of the Investment and Trust/custodial fund under Section 501(a), if the Trustees/Custodian conclude that such a determination is desirable.

6.3. Investment Options. Each Participant may allocate his Deferred Compensation and employer Contributions, if any, among the investment options, if any, provided under the Plan. A Participant may change his investment options in accordance with rules established by the Employer. Such modification may effect transfers of compensation already deferred and any Employer Contributions that may have already been made from one investment option to another and/or may prospectively change the investments to which future deferrals of compensation and Employer contribution, if any, shall be allocated, effective as soon as practicable after the Participant makes the change.

6.4 Account. The Employer shall maintain an Account for each participant to which shall be credited any Employer contributions made for such Participant and such Participant's Deferred Compensation at such times as it would have been payable but for the terms of his Participation Agreement. Each Participant's Account shall be revalued at least quarterly to reflect the earnings, gains and losses creditable thereto or debitable therefrom in accordance with the performance of the investment options selected by the Participant pursuant to Subsections 4.4, 6.2 and 6.3. The earnings, gains and losses creditable to or debitable from an Account shall mean the actual earnings, gains and losses of each investment option, on a pro rata basis among the Accounts of those Participants who selected that investment option.

Section 7. Distribution of Benefits:

7.1 Payments on Separation from Service. Subject to the provisions of Subsection 7.5, upon a Participant's separation from service with the Employer for any reason (including disability), the entire amount credited to his Account (less any federal, state or local income tax required to be withheld therefrom) shall be paid to him in equal monthly installments over a period not to exceed 5 years beginning after the expiration of the Election Period; provided, however, that during such Election Period a Participant (including a Participant who has utilized the catch-up deferral provisions of Subsection 5.3(b) with an Account balance in excess of an amount specified by the Employer, which amount shall not exceed the amount specified in Section 457(e)(9)(A) of the Code, as the same may be adjusted from time-to-time, may irrevocable elect in writing (on a form acceptable to the Employer) a specific later date for the first receiving payment under the Plan. In addition, a Participant may elect a different method of payment as provided in Subsection 7.2 by filing the appropriate form with the Employer no later than ninety days prior to the Participant's elected payment date. The Account balance of a Participant with less than the amount specified by the employer in his Account at the time of his separation from service shall be paid in a single lump sum to the Participant (less applicable taxes) as soon as practicable following his separation from service.

A Participant who has elected a specific later date for first receiving a payment under the Plan, as set forth above, may elect to further defer the date upon which such payment(s) will begin. Such election to further defer payment may be made only once, to a later date, as long as payments have not yet begun when such election is made.

7.2 Optional Forms of Benefit Payments. Subject to the provisions of Section 7.5, as an alternative to payment in a lump sum, a Participant whose Account balance exceeds the amount specified by the Employer under Subsection 7.1 above, may elect to receive payment under the Plan in the form of substantially equal monthly, quarterly, semiannual or annual installments for a period not to exceed the life expectancy (which may be recalculated annually) of the Participant or the joint life expectancy of the Participant and his Beneficiary; provided that no single payment (other than the last scheduled payment) is less than \$100.00. Any amount remaining in the Participant's Account at the end of the specified period shall be paid in a single lump sum payment. alternatively, such a Participant may elect an annuity under any one of the settlement options offered in a commercial annuity contract purchased by the employer for the purpose of providing benefit payments for the life of the Participant or the joint lives of the Participant and his Beneficiary and once begun, periodic payments must be made not less frequently than annually, in substantially non-increasing amounts.

7.3 Emergency Withdrawals. Except as otherwise provided in Subsection 7.5, distributions to or on behalf of a Participant shall be made only in the event of his separation from service with the Employer, unless such Participant experiences an unforeseeable emergency. "Unforeseeable emergency" means a severe financial hardship to the Participant resulting from (a) sudden and unexpected illness or accident of the Participant or a dependent of the Participant as defined in Section 152(a) of the Code, (b) the Participant's loss of property due to casualty, or (c) other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. Examples of events which may cause an "unforeseeable emergency" are catastrophic illness, flood, fire, earthquake, death in the family or disabling injury. Withdrawals will not be permitted for expenditures normally budgetable, such as a down payment on a home, purchase of an automobile, or education expenses. Withdrawal will not be allowed to the extent that the hardship may be relieved (i) through reimbursement or compensation by insurance or otherwise, (ii) by liquidation of the Participant's assets (to the extent such liquidation would not itself cause severe financial hardship), or (iii) by cessation or temporary suspension of deferrals under the Plan. Withdrawals of amounts because of an unforeseeable emergency will be permitted only to the extent reasonably needed to satisfy the emergency. Former Employees who have not yet received distribution of their entire Account balances shall also be eligible for emergency withdrawals under the same conditions as active Participants. A Participant or former Employee who experiences such an unforeseeable emergency may apply to the Employer for a withdrawal which shall be permitted, in the discretion of the Employer, only to the extent it complies with the requirements of

this Subsection 7.3. Any amount approved hereunder for emergency withdrawal shall be paid to the Participant in a single lump sum (less any applicable withholding taxes). The withdrawal shall be effective at the later of the date specified in the Participant's application or the date approved by the Employer.

7.4 Payments on the Death of a Participant.

- (a) Death After Benefit Commencement. If the Participant dies after having begun to receive installment payments in accordance with Section 7.2, payment of the remainder of such scheduled payments shall be suspended for a period of sixty days after the Participant's death. During each sixty-day suspension period, the Beneficiary of such participant may elect, subject to the distribution requirements of Subsection 7.5, to receive the balance then credited to the Participant's Account in a single lump sum or in installments as specified under Section 7.2, provided that the Participant's Account will be distributed to the Beneficiary at least as rapidly as under the method of distribution being used prior to the Participant's death. If no such election is made by the Beneficiary by the end of the sixty-day suspension period, the remaining installment payments selected by the Participant (adjusted, if necessary, to comply with the distribution requirements of Subsection 7.5) shall be paid to the Beneficiary.
- (b) Death Prior to Benefit Commencement. Subject to the provisions of Section 7.5, if the Participant dies before distribution of his Account commences, his Beneficiary shall receive distribution of such Participant's Account as provided under Section 7.1, treating the Beneficiary as if he were the Participant; provided however, that if the Beneficiary elects installment payments, the Participant's entire Account shall be distributed over a period not to exceed 15 years (or the life expectancy of the Participant's surviving spouse, if such spouse is the Participant's Beneficiary).

7.5 Provisions Required Pursuant to Code Section 401(a)(9).

- (a) Timing and Amount of Required Distributions.
 - (1) Notwithstanding any of the foregoing, distribution of a Participant's entire Account shall commence not later than April 1 following the calendar year in which he attains age 70 ½ or retires from service, whichever is later. Unless the form of distribution is a single lump sum payment, distributions shall be made over a period not exceeding the

life expectancy of the Participant, or the joint life expectancy of the Participant and his Beneficiary.

- (2) If the Participant's entire Account is to be distributed in a form other than a single lump sum payment, then the amount to be distributed each year must be at least an amount equal to the quotient obtained by dividing the Participant's entire Account balance (determined as of the last valuation date of the preceding calendar year) by the life expectancy of the Participant or (if applicable) the joint life expectancy of the Participant and his designated Beneficiary. Life expectancy and joint life expectancy shall be computed by the use of the return multiples contained in Section 1.72-9 of the Treasury Regulations.

(b) Distributions After Death.

- (1) If the Participant dies after having begun to receive installment payments in accordance with Subsection 7.2, the remaining portion of such Participant's Account shall continue to be distributed at least as rapidly as under the method of distribution being used prior to the Participant's death.
- (2) If the Participant dies before distribution of his Account commences, the participant's entire Account shall be distributed in one of the distribution options provided under Subsections 7.1 and 7.2 no later than December 31 of the calendar year which contains the fifth anniversary of the Participant's death except:
 - (i) that if the beneficiary is not the Participant's spouse, and such non-spousal beneficiary elects to commence distribution by December 31, of the year following the year the Participant died, such non-spousal beneficiary may elect a periodic payment not exceeding 15 years, as set forth in Sec. 7.4(b) above; or
 - (ii) that if the designated Beneficiary is the Participant's surviving spouse, such spouse may elect to receive distribution of the Participant's entire Account in substantially equal monthly, quarterly, semiannual or annual installment payments over the life expectancy of the surviving spouse. Such distributions are required to commence on or before the later of (i) December 31 or the calendar year

immediately following the year in which the Participant died, or (ii) December 31 of the calendar year in which the Participant would have attained age 70 ½ . If the spouse dies before such payments begin, subsequent distributions shall be made as if the spouse had been the Participant. For purposes of this subparagraph, payments will be calculated by use of the return multiples specified in Section 1.72-9 of the Treasury Regulations.

- (c) Interpretation. The provisions of this Subsection 7.5 shall override any distribution options in the Plan that are inconsistent with this subsection. All distributions under the Plan shall be made in accordance with Treasury Regulations issued under Section 401(a)(9) of the Code. The provisions of this subsection shall be effective as of January 1, 1989.

7.6 Effect of Reemployment. If a Participant who separates from service again becomes an Employee, no distributions shall be made or continued to the Participant while he is so employed. Any amount which the Participant was entitled to receive on his prior separation from service shall be held until the Participant or his Beneficiary is again entitled to a distribution under the terms of the Plan.

7.7 De Minimis Distributions. Notwithstanding any other provision of the Plan, if the Participant has not deferred any amount for a 2-year period and the total amount of the Participant's Account under the Plan does not exceed \$5,000, a Participant may elect to receive, or the Plan may elect to distribute without the Participant's consent, the entire value of the Participant's Account in a lump sum distribution. No subsequent distribution under this provision to such Participant may be made, once such distribution occurs.

Section 8. Nonassignability: The interest of a Participant in the contractual obligation of the Employer, established by the Plan, shall not be assignable in whole or in part, directly or by operation of law or otherwise, in any manner.

Section 9. Miscellaneous:

9.1 No Effect on Employment. Neither the Establishment of the Plan nor any modification thereof, nor the establishment of an Account, nor any agreement between the Employer and the Custodian, nor the payment of any benefits, shall be construed as giving to any Participant or other person any legal or equitable right against the Employer except as herein provided, and in no event shall the terms of employment of the employee or Participant be modified or in any way affected hereby.

9.2 Construction. This Plan shall be construed, administered and enforced according to the Constitution and laws of the State of California.

9.3 Plan to Plan Transfers. Plan to plan transfers shall be permitted as follows:

- (a) Transfers from Plan. To the extent and in the manner permitted under Section 457(e)(10) of the Code and the Treasury Regulations thereunder, the balance in the Account of a Participant who is no longer an Employee and who subsequently becomes a participant in another eligible deferred compensation plan under Section 457(b) of the Code shall be transferred to his account in the plan of his new employer; provided that such plan provides for the receipt of such transferred amounts. If a Participant's Account has been transferred to such plan, the Participant shall not be entitled to receive any benefit under this Plan, notwithstanding anything in this Plan to the contrary.
- (b) Transfers to Plan. If prior to becoming an employee, an individual participated in another eligible deferred compensation plan under Section 457(b) of the Code, the Employer may in its discretion accept transfer of any amount credited to the deferred compensation account of such Employee under that plan, and in the event of such transfer, shall establish for the employee an Account under the Plan to which such amount shall be treated as an amount deferred under and subject to the terms of the Plan, except that no amount so transferred will be taken into account in applying the deferral limitations set forth in Subsection 5.1.

Section 10. Amendment and Termination:

10.1 Amendment and Termination. The Employer may at any time and from time to time by action of its governing or appointing board as evidenced by an instrument in writing duly executed by the Employer modify, amend, suspend, or terminate the Plan in whole or in part (including retroactive amendments) or cease deferring compensation pursuant to the Plan for some or all Participants. In the event of such an action, the employer shall deliver to each affected participant a notice of such modification, amendment or termination or a notice that it shall cease deferring Compensation; provided, however, that the Employer shall not have the right to reduce or affect the value of any participant's Account or any right accrued under the Plan prior to such modification, amendment, termination or cessation.

10.2 Interpretation. This Plan is intended to qualify as an eligible deferred compensation plan under Section 457 of the code, and shall be interpreted and administered in a manner consistent with such qualification. The Employer reserves the right to amend the Plan to the extent that it may be necessary to conform the Plan to the requirements of Section 457 of the Code and any other applicable law, regulation or ruling, including amendments that are retroactive to the effective date of the Plan. In the event that the Plan is deemed by the Internal Revenue Service to be administered in a manner inconsistent with Section 457 of the Code, the Employer shall correct such administration within the period provided in Section 457 of the Code. The Employer reserves the right to take such action and do such things as are required to make the Plan, as administered, consistent with Section 457 of the code.

Section 11. Plan Administration:

11.1 Administration. The Plan shall be maintained by the Employer, which may recommend rules and regulations for the administration of the Plan consistent with the terms of the Plan. All rules and regulations recommended by the Employer shall be final and conclusive upon adoption by resolution of the governing or appointing board of the Employer.

11.2 Powers. The Employer shall have all powers to perform all duties necessary to exercise its functions including, but not limited to, the:

- (a) Determination of Employees' eligibility, participation and benefits under the Plan;
- (b) Establishment and maintenance of written records showing at any time the interest of a Participant in his book Account;
- (c) Interpretation and construction of the provisions of the Plan;
- (d) Direction of the Employer (or the Trustee/custodian on behalf of the Employer) to make disbursement of benefits under the Plan;
- (e) Appointment of such agents, advisors, counselors and delegates including an Administrator as may be necessary and appropriate for the administration and operation of this Plan and the delegation to such agent, advisors, counselors and delegates of any of its discretionary and ministerial powers and duties in accordance with this Section; and

- (f) Composition of any provision to Participants of all forms as described in this Plan.

11.3 Revocability of Administrative Action. Any action taken by the Employer with respect to the rights or benefits under the Plan of any person shall be revocable by the employer as to payments or distributions not theretofore made pursuant to such actions and appropriate adjustments may be made in future payments or distributions to a Participant or Beneficiary to offset any excess payment or underpayment theretofore made to such Participant or Beneficiary.

Section 12. Gender and Plurals. The masculine gender shall include the feminine and neuter, the masculine pronoun shall include the feminine and neuter, the singular number the plural, and conversely, whenever appropriate.